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HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 980th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 9 July 1990, at 10.30 a.m.

Chairman: Mr. DIMITRIJEVIC

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GE.90-16509/2196B

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The meeting was called to order at 10.45 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN, in the absence of Mr. Lallah, declared open the thirty-ninth session of the Human Rights Committee.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda)

2. The CHAIRMAN drew the attention of members of the Committee to the provisional agenda (CCPR/C/66).

3. The provisional agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

4. The CHAIRMAN drew the attention of members of the Committee to an informal document setting out the proposed programme of work; contrary to what was shown in the timetable for consideration of reports of States parties appearing on page 6 of the agenda (CCPR/C/66) under item 4, the proposed programme of work scheduled consideration of reports only from San Marino, Viet Nam, Zaire and Tunisia.

5. Mrs. KLEIN (Secretary of the Committee) informed members that the Minister for Foreign Affairs of Panama, a country whose second periodic report should normally have been considered at the current session, had sent the Secretariat a note requesting that consideration of the report should be postponed since the new Panamanian Government wished to submit additional information.

6. Mr. EL-SHAFEI asked whether the Committee could not consider the report of another State party in place of the Panamanian report.

7. Mrs. KLEIN (Secretary of the Committee) said that since the note from the Ministry of Foreign Affairs of Panama had reached the Secretariat only the previous week, time had been too short to contact other States parties whose reports were ready and request them to send a delegation to introduce the report and reply to questions. It would therefore not be possible to consider another report instead of the Panamanian one.

8. The CHAIRMAN announced that the San Marino delegation had already arrived and had requested that the report of San Marino should be considered if possible during the two meetings to be held during the day and not, as scheduled in the proposed programme of work, at the afternoon meetings of 9 and 10 July. He suggested that, if sufficient time remained after it had dealt with its scheduled work, the Committee should start consideration of the San Marino report at the current meeting.

9. Mrs. HIGGINS asked whether the San Marino delegation would be able to establish the necessary contacts to be in a position to give immediate and comprehensive replies to the questions which members of the Committee might ask.

10. The CHAIRMAN said that, on the assumption that the San Marino delegation must be prepared to give comprehensive answers to the questions which would be put to it, he would take it that the Committee wished to adopt the proposed programme of work.

11. It was so decided.

12. The CHAIRMAN invited the Chairman/Rapporteur of the Working Group under article 40 to report on the work of the group.

13. Mr. POCAR (Chairman/Rapporteur of the Working Group under article 40) gave an oral report on the work of the Group, which had consisted of Mr. Aguilar, Mr. Fodor, Mr. Ndiaye and himself. The Group had met from 2 to 6 July 1990 and had considered the various matters delegated to it by the Committee at its thirty-eighth session. In particular, it had approved the lists of issues to be taken up in connection with the consideration of the periodic reports before the Committee at its thirty-ninth session, namely those of Zaire, Tunisia and Panama, basing itself on the draft lists prepared by the Secretariat. The members of the Committee would find in their files only the lists for Zaire and Tunisia in view of the fact that the Panamanian report would not be considered at the current session. The lists had been drawn up in accordance with the Committee's usual practice and took account of the fact that Zaire was submitting a second periodic report, whereas Tunisia was submitting its third periodic report. The reason why the list for Tunisia appeared to be as long as that for the second periodic report was that the questions were much more specific than for a second periodic report.

14. In accordance with its mandate, the Working Group had also considered the draft general comment on article 23 of the Covenant on the basis of a preliminary report by Mr. El-Shafei and an earlier draft report prepared by the Working Group at its thirty-eighth session, as well as comments made at the preceding session in New York. Most of the comments had been accepted and incorporated into a new draft which would be submitted for the consideration of members of the Committee. He hoped that at its current session, with the co-operation of all members, the Committee would be able to adopt the draft general comment on article 23 of the Covenant, even if further amendments had to be made to it.

15. Lastly, the Working Group under article 40 had considered the conclusions and recommendations contained in the study on possible long-term approaches to the supervision of existing and new instruments on human rights (A/44/668) of relevance to the activities of the Committee (CCPR/C/66, para. 2). It had endeavoured to produce a paper highlighting the main points of those recommendations and conclusions to enable the Committee to discuss them and to give its views on the subject in its report to the General Assembly, bearing in mind that the issues under consideration had already been examined by the Committee at its thirty-eighth session in connection with the action taken by the General Assembly at its forty-fourth session.

16. In conclusion, he expressed his warm appreciation to the Secretariat, and particularly to Mrs. Klein, Secretary of the Committee, for the assistance which had been provided to the Working Group in the form of working documents which had enabled the Group to make optimum use of the time allocated to it.

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17. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt the oral report of the Chairman/Rapporteur of the Working Group under article 40.

18. It was so decided.

19. The CHAIRMAN invited the Committee to consider the list of issues to be taken up in connection with the consideration of the second periodic report of Zaire, as proposed by the Working Group in an informal document.

20. Mr. POCAR (Chairman/Rapporteur of the Working Group under article 40) pointed out that the list included questions relating more specifically to the country concerned, as was the Committee's usual practice when considering second periodic reports.

21. The list of issues to be taken up in connection with the consideration of the second periodic report of Zaire (CCPR/C/57/Add.1) was adopted.

22. The CHAIRMAN invited the Committee to examine the list of issues to be taken up in connection with the consideration of the third periodic report of Tunisia, as proposed by the Working Group under article 40 in an informal document.

23. The list of issues to be taken up in connection with the consideration of the third periodic report of Tunisia (CCPR/C/52/Add.5) was adopted.

24. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group on Communications) said that the Working Group had considered 12 draft recommendations and draft decisions at the four meetings held between 2 and 5 July 1990. The Group had adopted one admissibility decision, three recommendations for final views and eight recommendations for declaring communications inadmissible.

25. The Committee still had a considerable amount of work to do in view of the fact that at the preceding session it had not taken decisions on five draft final views and on one admissibility recommendation.

26. The Working Group had also discussed the matter of follow-up to the Committee's decisions. The Committee would recall that in its concern to be informed about the follow-up to its decisions, it had decided to appoint a special rapporteur on the subject at the current session. The Working Group had thought that it would be a good thing to consult Mrs. Higgins before preparing draft guidelines for the special rapporteur's functions. Furthermore, the Group would have to meet during the session to consider another draft recommendation to declare a communication inadmissible.

27. He wished to stress, because it was an alarming situation, that in spite of the praiseworthy efforts of the Secretariat there were still about 145 communications which were ripe for action and which required decisions about admissibility or the merits. It was quite clear that optimum use was being made of the Secretariat's existing resources and it was therefore urgent to engage additional staff if it was wished to put before future working groups a sufficient number of draft recommendations or decisions. It should also be mentioned that certain texts were available only in English and that

without the co-operation of a Spanish-speaking member of the Group who had been kind enough to work in English, the Working Group would have ground to a halt. It was time to make another appeal to the Secretary-General on the subject, and the Committee should mention it in its annual report to the General Assembly.

28. Mr. EL-SHAFEI said it was not the first time that the need to increase the resources of the Secretariat had been brought up; he wondered whether representations had been made to the Secretary-General on the matter.

29. Mr. HOUSHMAND (Representative of the Secretary-General) confirmed that the Secretary-General's attention had been drawn to the matter. The Secretary-General had submitted to the Economic and Social Council at its first ordinary session in 1990 a detailed report on the workload of the Centre for Human Rights and the resources required. After considering the report, the Economic and Social Council had requested that another report should be prepared for the forty-fifth session of the General Assembly and had recommended the allocation of additional resources under the budget for the next biennium. The Committee must therefore await consideration of the matter by the General Assembly. It would be duly informed of any decision which the latter might take. For his part, the Secretary-General was studying the situation in order to ascertain whether it was possible to strengthen the resources of the Centre for Human Rights in the current biennium, pending the arrangements which would be made for the next biennium covering the period 1992-1993.

The meeting was suspended at 11.25 a.m. and resumed at 11.50 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4)

Initial report of San Marino (CCPR/C/45/Add.1)

30. At the invitation of the Chairman, Mrs. Bonelli, Mr. Thomas and Mrs. Zeiler-Werbrouck (San Marino) took places at the Committee table.

31. Mrs. BONELLI (San Marino), introducing the initial report of San Marino (CCPR/C/45/Add.1), informed the Committee that the post she occupied at the Ministry of Foreign Affairs of her country required her to deal principally with matters relating to policy and protocol. That would explain any shortcomings in her replies to questions which were too technical or legal.

32. Since the report had been prepared in 1988, several developments had occurred which were worthy of mention. For example, on the international scene, the Republic of San Marino was current Chairman of the Committee of Ministers of the Council of Europe. Since becoming a member of the Council, San Marino had naturally acceded to all the conventions which the Council had adopted. San Marino had also ratified a number of international instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and at the European level it had accepted the jurisdiction of the European Commission of Human Rights and the European Court of Human Rights.

33. Furthermore, the Republic of San Marino participated actively in the Conference on Security and Co-operation in Europe and had recently been responsible for a number of initiatives and proposals, including a proposal to launch an appeal in favour of abolishing capital punishment.

34. In the field of bilateral relations, mention should be made of the recent signature and entry into force of an agreement with Italy whereby the Republic of San Marino had regained its autonomy in the field of information which it had given up in 1953. For the inhabitants of the Republic, the entry into service of broadcasting stations was a measure promoting the exercise of the right to information and a better dissemination of culture. It also contributed to preserving the historical heritage of the Republic.

35. Her delegation was at the disposal of members of the Committee to reply to any questions they might wish to ask in connection with the San Marino report.

36. Mr. POCAR said that the Republic of San Marino, the oldest and smallest republic in the world, had a long tradition of protecting human rights: it had been pursuing for a very long time a policy of defending liberties, as Italians in particular well knew, and had always been a country of asylum. Its accession to the Covenant and the Optional Protocol and the information which the delegation had just provided confirmed the positive attitude of the Government of San Marino to human rights.

37. The initial report, a rather brief document which dealt principally with the legislation in force in the Republic, was characterized by its frankness. He would nevertheless like to have more information on certain points. It was stated in paragraph 3 (b) under part I that not all provisions of the International Covenant on Civil and Political Rights could be invoked directly before courts. He deduced from that that the Covenant did not have the force of law and that its provisions had to be expressly embodied in internal legislation in order to be so invoked. He requested the delegation of San Marino to clarify the status of international instruments, and particularly the Covenant, in relation to internal legislation and to explain how, in the event of conflict between particular provisions of the laws of the Republic and those of the Covenant, the provisions of the latter were given effect. If a law was not in conformity with the provisions of the Covenant, how was the problem resolved? Did the decision lie solely with the legislature, or did it sometimes fall within the competence of the judiciary? Did the law of 8 July 1974, No. 59 (Declaration of the rights of citizens and other fundamental principles in the San Marino legal system) take precedence over other laws which might be invoked in court?

38. In paragraph 3 (e), it was stated that in addition to the law of 1974 and the Penal Code, no other legal means existed at present that guaranteed the enforcement of the provisions of the Covenant. However, he had the impression that other internal laws gave effect to particular provisions of the Covenant or in any case were in conformity with the latter, for example the laws mentioned in connection with articles 9 and 14 of the Covenant (the law of 28 October 1970, No. 45 and the law of 9 December 1970, No. 50). The statement in paragraph 3 (e) appeared to be rather restrictive and inaccurate and he would like the delegation of San Marino to address that point.

39. With regard to the judiciary, he believed that there was in San Marino either a written or customary rule whereby judges could not be citizens of the Republic. Was that really the case? If so, what was the reason for that? Lastly, he would like to know how judges were appointed in San Marino.

40. Mr. MAVROMMATIS welcomed the delegation of San Marino, a country which, like his own country of Cyprus, belonged to the group of neutral and non-aligned countries at the Conference on Security and Co-operation in Europe. The CSCE offered such countries the opportunity to make themselves heard, and had finally proved to be of great significance in the field of human rights and humanitarian law. For small countries, such as San Marino and Cyprus, the greatest security was probably not to be found in alliances, but in respect for human rights, fundamental freedoms and democracy.

41. The initial report of San Marino was very brief and took relatively little account of the Committee's guidelines. He hoped that the next report would be more forthcoming about not only the de jure but also and above all the de facto situation in the Republic. In particular, he would like to know more about the specific links between San Marino and Italy. The delegation had spoken of the autonomy of the media, but it might be asked whether the geographical situation of the Republic, whose territory was enclaved by Italy, had been or was a source of difficulties where human rights were concerned. For example, were there any problems with regard to extraterritoriality or extradition; more generally, did the geographical situation constitute a handicap? Were existing arrangements with Italy adequate?

42. Like Mr. Pocar, he would like to know more about the general hierarchy of laws in San Marino. Were there, for example, fundamental laws or a bill of human rights? Noting from the report, under 3 (b), that not all provisions of the Covenant could be invoked directly before courts, he remarked that there was a distinction between "invoking" and "applying" provisions. Especially in the case of countries which were parties to the Optional Protocol, it should, at the very least, be possible to invoke all the provisions of the Covenant, even if the decision remained with the court. He would welcome information concerning the structure of the legal system, and the place which it accorded to the Covenant. In part I of the report, under 3 (c), it was stated that the civil and penal courts were the only competent authorities for the safeguard of civil and political rights. Were there, then, no administrative tribunals or other similar courts to protect those rights? Was no recourse to a higher instance possible; and were there no plans for institutional arrangements of the kind which had demonstrated their usefulness in other countries, such as the appointment of ombudsmen or the creation of national commissions for human rights or similar mechanisms?

43. Adding to a question by Mr. Pocar, he asked for information concerning the structure of the judiciary and the manner of preserving its independence (procedures for appointing judges, duration of their terms of office, provisions for transfers and suspensions, etc.).

44. It was stated in the eleventh paragraph of part II of the report that in the case of civil suits, foreigners might be required to pay the "cautio judicatum solvi" to appear before court. He wondered whether that provision was in conformity with articles 2, 14 and 26 of the Covenant, and sought the San Marino delegation's views on the matter.

45. In respect of article 13 of the Covenant, it was stated in the report that articles 121 and 127 of the Penal Code regulated the expulsion of a foreigner from the Republic as a security measure that the judge might take when pronouncing the verdict of guilty or the absolute discharge. There, too, he would welcome additional information either from the delegation or in a future report. On what grounds could a judge order the expulsion of a foreigner when pronouncing an absolute discharge; was such a provision necessary?

46. With regard to articles 17, 18, 19, 21 and 22 of the Covenant, the report stated that the secrecy of all communications was safeguarded and that the law might limit such rights only in exceptional cases for serious reasons of public order and interest. What were the exceptional cases, and the serious reasons? How was it possible to contest either the law itself or the validity of arguments permitting the application of its provisions?

47. What conditions had to be met by citizens of San Marino in order to enjoy the right to vote and to be elected? Finally, concerning article 26 of the Covenant, he drew the attention of the delegation of San Marino both to the jurisprudence and to the general comments of the Committee; they should be consulted in so far as article 26 established an autonomous right and national situations in that respect were highly variable, in view of the multiplicity of systems of social security, social assistance, and so on.

48. Mr. AGUILAR URBINA also found the initial report of San Marino to be extremely succinct, providing very few details concerning the manner in which the rights set out in the Covenant were protected. The Republic of San Marino certainly had a long tradition of respect for fundamental freedoms, and reports emanating, in particular, from non-governmental organizations mentioned no flagrant violations of human rights there; but it would nevertheless be useful to know whether the Constitution, the existence of which was not in fact mentioned in the initial report, guaranteed respect for the rights set out in the Covenant, or whether law No. 59 of 8 July 1974 had constitutional status.

49. It was stated under 3 (a) in part I of the report that law No. 59 and the Penal Code safeguarded civil and political rights, but it was also stated under 3 (b) that not all provisions of the Covenant could be invoked directly before courts. It might thus be asked what was the exact place of the Covenant in the internal legislation of San Marino and what possibilities the inhabitants of the Republic had of defending themselves against violations of the rights guaranteed by the Covenant. How, moreover, were conflicts between the provisions of internal legislation and those of the Covenant resolved?

50. Generally associating himself with the questions posed by Mr. Pocar and Mr. Mavrommatis, he said that he, too, would welcome further details, in a supplementary report, concerning legislation on human rights other than law No. 59 and the Penal Code. In particular, he would ask whether the Constitution provided for the prohibition of capital punishment and how citizens who were victims of a miscarriage of justice could obtain redress, given that the law did not provide for compensation in such instances. He was also surprised to note from the last paragraph on page 2 of the report that foreigners - but not nationals - could be required to deposit security in

order to appear before court. He also wished to know what exceptional cases could give rise to limitation of the right to secrecy of all communications (p. 3, tenth paragraph of the report), and what safeguards were provided in that matter.

51. Concerning article 25 of the Covenant, he sought clarification concerning the "procedures laid down by the law" concerning the right to hold public office and elective posts. Was the exercise of that right subject to any exceptions? If nationals of San Marino could hold public office in Italy, was the same true of Italian nationals in San Marino? Could the latter, in particular, serve as judges?

52. Concerning articles 23 and 24, it was stated in the report that marriage was based on a responsible and free choice. He sought clarification concerning the de facto situation: did civil and religious marriages enjoy equal recognition; and were unmarried couples treated in the same manner as other couples? What did the authorities of San Marino mean by the "moral equality" of those concerned?

53. Mr. ANDO said he was particularly interested to know whether San Marino indeed had a Constitution; and whether there was a fundamental law that amounted to a bill of human rights, or whether the only applicable legal provisions were those to be found in law No. 59 of 8 July 1974 and the Penal Code. He also sought information concerning the relationship between internal legislation and international instruments, and asked which of the provisions of the Covenant were not applicable or could not be invoked before the courts. Had the Government of San Marino taken steps to make the public aware of the existence of the Covenant and to inform them of the rights that were guaranteed therein?

54. Concerning the judiciary, he asked for details concerning the training and appointment of judges and lawyers. Noting from the report that capital punishment did not exist, he asked what was the maximum sentence that could be imposed, and for what offences. He further asked what was, in general, the amount fixed by the judge for release on bail, and what happened to individuals who were unable to pay that sum. Did San Marino have a system of legal assistance?

55. He also sought clarification concerning the treatment of persons who were found innocent after having been arrested and detained, since, according to the report, there was no provision for compensation for miscarriage of justice. He also wondered why foreigners could be called upon to deposit security in order to appear before a court, and what happened to foreigners who did not have the means to do so. Concerning articles 17, 18, 19, 21 and 22, he asked the delegation of San Marino to describe certain cases which had given rise to jurisprudence; concerning articles 23 and 24, he asked what was meant by "the community" and the type of assistance available to the mother.

56. Mr. COORAY, noting that the Republic of San Marino had a long tradition of independence and respect for fundamental freedoms, observed that the information provided in the initial report was too succinct to provide the Committee with a proper idea of the situation; it appeared, moreover, that the

report had not been drawn up according to the Committee's guidelines. For example, it contained no description of the constitutional and juridical framework for the application of the Covenant or of the organization of the judiciary. That was why, like other members of the Committee, he would ask what place was accorded to the Covenant in the internal legislation of San Marino, and to what extent the independence of judges and of the judiciary in general was safeguarded.

57. Since the dissemination of information concerning the Covenant was essential and indeed indispensable if the people were to enjoy the rights it guaranteed, he asked whether the text of the Covenant in Italian had been distributed in schools, universities, police academies and establishments where law enforcement personnel were trained. Further, in connection with the application of article 3 of the Covenant, he asked what were the relative percentages of women members of parliament, of women in public office and of women in positions of responsibility in higher education. In that connection, he asked whether the Government of San Marino had ratified or intended to ratify the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Political Rights of Women.

58. Mr. PRADO VALLEJO associated himself with the questions posed by earlier speakers. Sharing the view that the initial report of San Marino was so very succinct that additional information was obviously called for concerning the system in operation in the country to ensure the safeguarding of human rights and recourse in the case of alleged violations, he asked in particular whether San Marino had a political Constitution and what were the legislative provisions concerning the separation of powers.

59. Since the report was far too brief, members of the Committee were unable to engage in the dialogue that was called for if possible difficulties in the application of the provisions of the Covenant, such as occurred in the majority of States parties, were to be identified. For example, the Government of San Marino should state why the law failed to provide for compensation in case of miscarriage of justice; describe the procedure for the election of magistrates and Supreme Court judges; and indicate what guarantees there were concerning the independence of the judiciary. The Committee would particularly wish to know what steps had been taken by the Republic of San Marino to meet the obligations set out in article 2 (1) and (2) of the Covenant.

60. In his opinion, it would be preferable for the State party to present a supplementary report, prepared in conformity with the guidelines drawn up by the Committee; that would certainly make it possible to engage on a future occasion in a more productive dialogue.

The meeting rose at 1 p.m.

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Thirty-ninth session

SUMMARY RECORD OF THE 981st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 9 July 1990, at 3 p.m.

Chairman: Mr. COORAY

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

San Marino (continued)

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GE.90-16514/6868A

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of San Marino (CCPR/C/45/Add.1)

1. Mrs. HIGGINS joined in welcoming the delegation of San Marino, a country well known for its freedom and democracy. Unfortunately, the initial report erred on the side of brevity, and failed to follow the available guidelines, which had been designed to facilitate dialogue and called not only for full indications of the legislation pertaining in the State party but also for references to relevant court cases and administrative practices and some discussion of problems and issues that had arisen under each heading of the Covenant.

2. Her own nationality hardly fitted her to comment adversely on the apparent absence, in San Marino, of a written constitution; she would, however, seek the assurance that certain "constitutional" provisions had been established through other procedures, including perhaps common law although that seemed unlikely, and that there was indeed a notion that some law was more profound and fundamental than any other.

3. Some such assurance could indeed be found in the reference in the report to the law of 8 July 1974, concerning which more detailed documentary information had also been set before the Committee. That law seemed to cover many rights enunciated in the Covenant, for example, that of equality before the law on a non-discriminatory basis (although she had noted that the prohibited elements of discrimination were narrower than those set out in articles 3 and 26 of the Covenant). But while, for instance, no mention was made of the express prohibition of discrimination on the grounds of sex or language, it seemed that the law did guarantee civil and political rights and the inviolability of the person in a general fashion, albeit in less detail, and included many of the elements contained in the Covenant.

4. It was, however, pointed out in the report itself that not all of the provisions of the Covenant could be invoked directly before courts. Did that imply that only those provisions which found reflection in the law of 8 July 1974 or elsewhere in discrete laws could be applied by the courts? If that was indeed the case, how did San Marino intend to fill the gaps and make good the shortcomings? Was no new, complementary law envisaged?

5. Recalling that under the Covenant, it was traditional to refer to both the "internal" and the "external" aspects of self-determination, she asked whether the constitutional relationship of San Marino with Italy meant that the external aspect was reserved to the latter State.

6. No mention was made in the report of article 4 of the Covenant, which provided for derogations in time of public emergency. What domestic legal provisions would apply in the admittedly unlikely eventuality of a short-term necessity in San Marino to derogate from certain rights? What control would be exercised over any such derogation?

7. Concerning the paragraph in the report relating to articles 9 and 14 of the Covenant, she asked how much time generally elapsed before a case came to

trial and whether there was a point beyond which a person detained must be released if not brought to trial. Was there any significant backlog in that respect?

8. In view of the limited references to article 14 of the Covenant, she would be particularly grateful if the delegation of San Marino would review before the Committee the various provisions set out in article 14(3) of the Covenant, indicating whether the requirements specified therein were satisfied as a matter of domestic law and practice. Was legislation envisaged to provide in future for compensation for miscarriage of justice?

9. She would also appreciate amplification of the report concerning article 10 of the Covenant, and, more particularly, the assurance that the provisions of article 10(2) concerning accused persons were respected. Finally, and as regards the report on articles 17, 18, 19, 21 and 22, she endorsed the questions, posed by other speakers, adding a further query as to the limits to normal freedom of expression established in San Marino by its laws of libel and slander.

10. Mr. EL SHAFEI welcomed the representatives of a State which he knew from personal experience to have an efficient, albeit slender administration, whose limited dimensions perhaps accounted in part for the brevity of the report. A productive dialogue had, however, been initiated, and he was sure that the second periodic report would contain much fuller information based on a greater awareness of the functioning of the Committee.

11. Like other speakers, he was anxious to establish more clearly the status of the Covenant within the constitutional and the legal framework of San Marino. The statement that not all of its provisions could be invoked directly before courts posed the question of which provisions had been left aside, as well as whether any decision by the courts had been based on provisions of the Convention.

12. Subscribing to most of the inquiries by earlier speakers, he was also particularly concerned to know whether, with respect to the rights set out in article 13 of the Covenant, the legislation of San Marino provided for recourse in the case of expulsion. What rules governed the possible limitation of certain rights alluded to in the report?

13. Finally, he had noted the emphasis laid in the opening statement by the delegation on the accession of San Marino to European human rights instruments, an action which could certainly not give rise to conflict where the International Covenant on Civil and Political Rights was concerned. The Committee would expect San Marino as a State party to show the same enthusiasm with regard to the Covenant; it would also expect certain measures to be taken to ensure the compatibility of its domestic law with international law.

14. Mr. MYULLERSON said that although he personally must admit to insufficient familiarity with the status of civil and political rights in San Marino, the fact that there were no submissions from non-governmental organizations, alleging that those rights were being violated suggested that a satisfactory situation pertained.

15. He did, however, share the concerns raised by a number of previous speakers, and was particularly anxious for an explanation of the statement that not all the provisions of the Covenant could be invoked before courts.

Observing that in many countries, special public or State commissions or committees concerned themselves with human rights, he asked whether such was the case in San Marino and how such bodies, if they existed, functioned.

16. The second half of the first paragraph of the report dealing with articles 9 and 14 of the Covenant mentioned two deadlines, of 48 hours and 4 days, in connection with conditions for the release of persons under provisional arrest. Perhaps that apparent contradiction could be explained?

17. Were there any national or religious minorities in San Marino? If so, were there any problems with those minorities, and how were the problems resolved?

18. Noting that under the law of San Marino a foreigner involved in a civil suit might be required to pay the "cautio judicatum solvi" to appear before court, he suggested that such a provision might be seen as discriminatory, asked how it was applied in practice, and further asked what happened if a foreigner was unable to pay such a fee in order to defend his or her interests.

19. Like Mrs. Higgins, he would like to have more information on possible restrictions on human rights in time of public emergency.

20. Since the law of San Marino might limit certain rights in exceptional cases "for serious reasons of public order and interest", he asked whether the grounds for such limitation were spelt out more specifically in the country's legislation.

21. Mr. WENNERGREN noted that although nearly all the previous speakers had addressed themselves to the first two paragraphs of Part I of the report, each had highlighted different aspects. His own understanding was that although the legislation of San Marino must obviously embody some elements of a constitutional nature whereby the State was organized, its basic law contained no specific provisions or articles dealing with civil rights. Instead, there was the law of 8 July 1974 which had no constitutional dignity, and covered some but not all of the provisions enshrined in the Covenant. Like other speakers, he would very much welcome a more explicit account of the nature of that law, of what it contained and what it omitted, and which provisions of the Covenant could not yet be enforced in San Marino.

22. He noted that in the reference to articles 17, 18, 19, 21 and 22 of the Covenant, listing a number of freedoms, that of expression was conspicuous by its absence. Inviting the delegation of San Marino to comment on that and the other omissions to which he had alluded, he asked why no steps had been taken, more especially during activities in connection with accession to the European Convention and the International Covenant, to make good the shortcomings in the 1974 law.

23. Finally, in connection with the liberty of the person, which was covered in articles 9 and 14 of the Covenant, the report suggested that it was for the police to inform the court of provisional arrests before the latter pronounced on such detention. But what happened if that requirement was not in fact complied with? Was there no provision for appeal, recourse or habeas corpus; was there no way whereby a detained person could ask the court to rule on the matter?

24. Mr. FODOR noted the extreme brevity of the report, which failed to address certain articles of the Covenant, for example, articles 2, 3, 4, 5, 16 and 27. Additional information had, it was true, been provided in the introductory statement, but on the basis of the material before the Committee it was most difficult to form a reliable opinion of the implementation of the Covenant or indeed of its precise status within the legal system of San Marino. Like other speakers, he was particularly concerned that not all its provisions could be invoked directly before courts and that some of them still had to be included in written laws, and sought the reasons for that state of affairs.

25. Some of the references in the report were, moreover, limitative: article 7 of the Covenant, for example, dealt with more than the subject of torture; and he would like additional information on such matters as the treatment of prisoners and other detainees.

26. In connection with articles 9 and 14, he asked why the law did not provide for any compensation for miscarriage of justice. What was the average period of time spent on adjudicating criminal cases? How was the principle of presumption of innocence ensured in criminal procedure? What was the maximum duration of pre-trial detention? The report stated that foreigners had to be provided with residence and work permits to take up residence and work in San Marino; that statement called for some elucidation. Concerning the expulsion of foreigners, was the judge the only authority competent to make such an order, or could administrative authorities also do so? The report stated that the secrecy of all communications was safeguarded; how was that achieved? In relation to article 22 of the Covenant, what legal provisions were applicable in San Marino to the establishment of new political parties? Finally, notwithstanding the Republic's small size, did it have minorities?

27. Mrs. BONELLI (San Marino) expressed her delegation's appreciation of the many expressions of friendship and sympathy for her country voiced by the members of the Committee. Her delegation's appearance before the Committee had enabled it to have a better understanding of how to draft reports more comprehensively in future. The answers to a number of the questions raised would appear in a new report by San Marino; meanwhile, she would provide some explanations on other matters.

28. With regard to the question of the status of international covenants, the instruments in question were submitted to the 60-member Great and General Council, the Parliament of San Marino. Once an instrument was adopted by a majority of the Council, a decree was promulgated to make it a law of the State. Any citizen could invoke it and call for its full observance. The formulation of paragraph 3 (e) might be misleading; what was meant was that after San Marino's accession to the Covenant, there had been no specific legislation referring to the principles contained in the Covenant, except for the decree by which it entered into force and law No. 59 of 8 July 1974.

29. San Marino had no written constitution; the system of common law was in use. The first book of statutes dated back to the seventeenth century; the statutes had been amended and updated with time. The Committee might find it difficult to understand how, in today's world, there could be respect for the rights of citizens without a constitution. However, San Marino consisted of 24,000 inhabitants in a territory of 60 km^2. It was a country born in medieval times when the population had been so small that legislation had not been necessary to enshrine guarantees that existed in practice.

30. In 1974 the need had been felt to make legal provision for the protection of the rights and fundamental freedoms of San Marino's citizens, and the law of 8 July 1974 took broadly into account all aspects covered by the Covenant. Article 1 of the law stipulated that San Marino recognized the rules of international law as an integral part of domestic law. An entire range of rights was recognized by the law of 1974. As was natural for a country with a tradition of hospitality, San Marino recognized the right of asylum. It also observed the right to leave and return freely to one's own country, the right of assembly and of association, and the right to freedom of opinion, conscience and religion. Article 16 specified the right of all citizens to join trade unions and political parties. It might seem excessive that a Council consisting of 60 members included six political parties, but it demonstrated that freedom of expression existed.

31. Article 16 of the 1974 law stated that its provisions could be amended by the Great and General Council by a two-thirds majority, whereas the ordinary laws of the State were adopted by a simple majority.

32. Judges were appointed by the Great and General Council. Until recently a judge had been appointed for a term of three years, after which the appointment had to be confirmed by the Council for a further term. An amendment to the law had been passed to abolish the requirement for confirmation every three years, so that the judges would have the status of State officials. However, under the reform of the Code of Criminal Procedure, the possibility of reverting to the system of confirmation after three years was being considered. Under a statute dating from the year 1600, judges might not be citizens of the Republic of San Marino. The reason for that prohibition was the extremely small size of San Marino. In a small society a judge might form ties with people and contract moral obligations to them, and thereby incur doubts as to his impartiality. That was why a return to the system of confirmation after three years was being considered.

33. Since 1 January 1990, San Marino no longer had an administrative tribunal. Detailed explanations on the subject would be given in the next report.

34. Concerning the relations between San Marino and Italy, there were no constitutional links between the two countries. Conventional links did exist, however. The first convention between Italy and San Marino dated from March 1862, and regulated all aspects of inter-community life. San Marino did not have formal customs posts on its frontiers, and relied on Italian customs. With regard to the position of San Marino citizens residing in Italy and vice versa, article 4 of the 1939 Convention established full reciprocity of political and civil rights of citizens between San Marino and Italy. Citizens could hold public office in each country and engage in trade and the liberal professions on an equal footing.

35. The rights of some 18,000 San Marino citizens who resided abroad were also respected; they had the right to vote in elections to renew the Council every five years. In addition, the cost of their travel to San Marino in order to vote was subsidized up to 75 per cent. In order to be elected to the Council it was necessary to be a citizen of San Marino, an adult, and not to have forfeited one's political rights. Members of the same family could not be elected to the Council at the same time.

36. The 10-member Congress of State constituted the central organ of executive power; persons who were members of the Council could not be elected to the Congress. The Captain Regent, who acted as Head of State, had to be a native of San Marino and his family had to have been citizens of San Marino for two generations. He could not be elected unless he had held public office for at least three years. Of the 60 members of the Council, 5 were women.

37. Women in San Marino had made up for the time when their rights had been denied. Two of the 10 members of the Congress of State were women: one was in charge of public education and the other of finances. Three women had held the office of Captain Regent. The majority of teachers were women, and in addition there were many women in the diplomatic and consular services and in the higher levels of the civil service. San Marino, however, had not yet acceded to the Convention on the Elimination of All Forms of Discrimination against Women. The smallness San Marino's administrative structure raised a problem; the obligations San Marino could undertake depended on its modest internal structure and the result was that it tended to be late in acceding to international conventions.

38. San Marino had fortunately never known the problem of apartheid. With a population of 24,000, San Marino, could not, so to speak, afford the luxury of having minorities.

39. Mr. POCAR said that the explanations given by the representative of San Marino had clarified the main thrust of the State's written legislation. In his view, the law of 8 July 1974, which contained the declaration of the rights of citizens, appeared to be a statute in some ways analogous to a constitutional provision in that it had precedence over other laws since, according to article 16, it could be amended only by a two-thirds majority decision of the Council. It followed that any law passed subsequently by a simple majority would be inapplicable if found to conflict with the 1974 law. It was true that San Marino did not possess a constitutional court to pronounce on contested legislation, but article 16 stated that in such cases a judge could seek the opinion of the Council which would make a ruling after receiving expert advice. He had also noted that article 16 prescribed that judges should observe the principles of the declaration contained in the 1974 law in applying other legislation.

40. However, he had some concern about the way the provisions of the Covenant had been introduced into the judicial system of San Marino by a decree of the Captain Regent after approval by what was presumably a simple majority vote of the Grand Council. He wondered what was the exact hierarchical status of such a decree. Presumably, in the event of conflict between the decree incorporating the provisions of the Covenant and the 1974 law, the latter would prevail, but if the decree nevertheless had the force of law, it would follow that all the provisions of the Covenant could be invoked directly before the courts. However, according to the State party's report (CCPR/C/45/Add.1, para. 3 (b)) not all the provisions could be so evoked. If such was indeed the case, it would be necessary to adopt a law which gave all the provisions of the Covenant the same hierarchical status as the 1974 law. It might well be that the question of evoking provisions of the Covenant before the courts had never yet occurred in practice. He hoped that San Marino's next report would clear up the point.

41. Mr. AGUILAR said that he found Mr. Pocar's interpretation most interesting and he looked forward to a more realistic review of what occurred in practice in the State party's next report.

42. Mr. FODOR noted that a certain number of questions were still awaiting a reply. San Marino had a good reputation for the protection of human rights, but he could not be certain from the information currently available whether or not all the provisions of the Covenant were being fully implemented.

43. Mr. MAVROMMATIS said that he hoped that the next report by the State party would follow the Committee's guidelines and deal with the unanswered questions, for example the issue of a renewable term of office of three years for judges as opposed to security of tenure. It would also be useful if the report had an appendix containing the text of conventions, laws and judicial decisions.

44. Mr. WENNERGREN said that he was not satisfied that he had fully grasped San Marino's rather complicated legal system. He hoped that the next report by the State party would explain the precise scope of the 1974 law and of the Captain Regent's decree incorporating the Covenant so that it was clear that in fact all the provisions of the Covenant were being implemented in practice: for example, what was the legal mechanism for enforcing the right to freedom of expression?

45. Mr. PRADO VALLEJO associated himself with the views expressed by previous speakers. He stressed that reports by State parties must deal not only with legislation but with practical difficulties encountered in fully implementing provisions of the Covenant.

46. Mr. ANDO said that San Marino's report had made him realize that small States had their own problems in protecting human rights, as for example the importance of kinship ties in the appointment of judges or the election of members of the Council. He would like further information on some specific issues, namely the fact that there appeared to be no possibility of a review of judicial decisions by a higher court, as required by some provisions of the Covenant, and that there was no provision for compensation in the event of a miscarriage of justice. He would also like some information about case-law, showing how restrictions on human rights on national security grounds were interpreted by the courts.

47. The CHAIRMAN thanked the delegation of San Marino for its full co-operation in a constructive dialogue which compensated for the paucity of information in the initial report. The Committee looked forward to receiving fuller information in the periodic report due in January 1992.

48. Mrs. Bonelli, Mr. Thomas and Mrs. Zeiler-Werbronck (San Marino) withdrew.

The meeting rose at 5.15 p.m.

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Thirty-ninth session

SUMMARY RECORD OF THE 982nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 July 1990, at 10 a.m.

Chairman: Mr. COORAY

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Viet Nam

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Viet Nam (CCPR/C/26/Add.3)

1. At the invitation of the Chairman, Mrs. Ngo Ba Thanh, Mr. Nguyen Chi Dung, Mrs. Ha Thi Ngoc Ha, Mr. Le Luong Minh and Mr. Nguyen Thanh Long (Viet Nam) took places at the Committee table.

2. Mrs. NGO BA THANH (Viet Nam) said she was pleased that for the first time a delegation from her country had the opportunity to engage in a dialogue with the Human Rights Committee, and hoped that dialogue would be constructive. The year 1945 had been the year of Viet Nam's liberation and reunification, and had marked the opening of a new chapter in its history, under the guidance of the enlightened precepts of President Ho Chi Minh, who had succeeded in linking the concept of sacred national rights with the concept of basic human rights. Only the guarantee of national independence and self-determination could open the way to democracy and to respect for individual freedoms.

3. In Viet Nam, the revolution of 1945 had meant, first, the complete emancipation of women and their liberation from the yoke of colonialism, feudalism and sex-based discrimination. From that moment onwards, the prohibition of any form of discrimination against women had become a basic principle both of domestic law and of international law for the Socialist Republic of Viet Nam, more especially since the Vietnamese Government had signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women. As a woman who had undergone great sufferings in the prisons of the former neo-colonialist régime of Saigon, she was particularly honoured to be presenting her country's initial report to the Committee.

4. Viet Nam had embarked on a vast programme of renovation and radical reform designed to liberalize the economy and to democratize the political system, a programme under which individuals and government authorities alike would have an obligation to respect and to promote human rights. Accordingly, anyone who considered that his rights had been violated or that his honour and dignity had suffered an affront could demand redress, notably in the form of a correction in the press.

5. Human rights were constantly evolving. Thus, the right to life, which was enshrined in article 6 of the Covenant, could no longer be considered under contemporary international law simply as the right not to be arbitrarily deprived of one's life: as had been affirmed in various General Assembly resolutions, it also encompassed the right to peace, the right to a healthy environment, the right to development and the right to an adequate standard of living. The General Assembly, in resolution 37/189, had expressed its firm conviction that the safeguarding of the right to life presupposed the need to strengthen peace, remove the threat of war, particularly nuclear war, halt the arms race and achieve general and complete disarmament under effective international control. It followed that the concept of human rights as defined in the Universal Declaration of 1948 would now have to be enlarged to

include the fundamental right to freedom, equality and an adequate standard of living. In that respect, policies of apartheid, racial discrimination and oppression stood condemned, and should be eliminated. The Vietnamese people, in the course of the war of aggression waged against them in defiance of world opinion, had been the victims of the worst kind of atrocities perpetrated by a great power which had not hesitated to use all kinds of weapons - military, economic, scientific and technological - that were prohibited under international law, thus destroying not only an incalculable number of human lives but also the environment that was essential to the survival of the populations of the region. That was the most odious crime man could commit against peace and against his fellow men.

6. In application of the principles enshrined in the 1980 Constitution, and in response to the call made by the United Nations for countries to take steps speedily to incorporate in their domestic law the provisions of international conventions relating to crimes against peace and humanity, the National Assembly had in 1985 adopted the country's first modern Penal Code, which included in a separate chapter penalties for crimes against peace, crimes against humanity, war crimes, and the recruitment of mercenaries. In view of the extreme seriousness of such crimes, and in accordance with the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Penal Code required that no statutory limitation should apply to the prosecution or punishment of crimes of that kind.

7. Concern at the deterioration in the quality of the environment as a result of contemporary forms of economic development had been expressed in many international forums. The questions raised by that deterioration were naturally linked to the question of the right to life. Viet Nam, for its part, had organized in 1987 a scientific symposium on the protection on the environment, as a first step in the preparation of an environmental protection act which was currently under study by the Commission for Science and Technology and the Law Commission of the National Assembly. The drafting of the act had led to the realization that the environment transcended national boundaries, and that environmental problems caused by inequalities of economic development, by illiteracy, by hunger, by sickness or by poverty affected all regions of the world. Viet Nam would be participating actively in the development of contemporary international law on the subject, since there was no doubt that henceforward many environment-related questions would need to be dealt with at the international level.

8. Her delegation welcomed the opportunity to enter into a constructive dialogue with the Committee. She thanked the Committee for having helped her country better to comply with its obligations in regard to the submission of reports.

9. Mr. ANDO said he understood that the Vietnamese people's long years of struggle against colonial domination and foreign interference must have given rise to serious economic and social difficulties, which had naturally hampered efforts in the field of protection of human rights. Accordingly, he was pleased to note that Viet Nam had nevertheless ratified numerous international human rights instruments, and was willing to engage in a dialogue with the Committee. The report of Viet Nam was succinct, and complied with the Committee's guidelines, but the Vietnamese delegation would no doubt be able to give more details on the actual situation that existed in the country.

10. More specifically, he would like to know what was the status of the Covenant in relation to Viet Nam's domestic legislation, in other words, whether, in order to be invoked before the courts, the Covenant would necessarily have to be incorporated into domestic law, or whether ratification was sufficient. He also asked how the judiciary was structured, and notably what was the composition of military courts, what qualifications and training were required for appointment to the magistracy, and to what extent the independence of the judiciary was guaranteed.

11. With regard to article 1 of the Covenant, while the atrocities committed by the Pol Pot régime in Cambodia were of course to be condemned, internal problems ought nevertheless to be solved by the peoples concerned, and intervention by Viet Nam in the affairs of Cambodia was not desirable. He was pleased to note that negotiations had been started, but would like to know whether Vietnamese troops had been withdrawn from Cambodia altogether.

12. In regard to article 3 of the Covenant, he understood from paragraph 37 of the report that before 29 December 1986, women had been at a disadvantage. What inequalities had existed before the law had been changed, what were the amendments that had had to be made, and would those amendments be taken into consideration when the new Civil Code was drafted?

13. He noted that the report said nothing about article 4 of the Covenant, which concerned emergency situations, and wondered whether the long periods of conflict undergone by Viet Nam might not have left an aftermath, even 15 years after unification. He would like some clarification as to the emergency measures, and as to what the human rights situation would be under a state of emergency.

14. Where article 9 of the Covenant was concerned, paragraph 63 of the report stated that the system of release on bail existed. Who would be entitled to stand bail: a relative, or a lawyer?

15. Concerning article 10 of the Covenant, he would like to know up to what age legislation on juvenile offenders was applicable, and what was the age of majority where criminal offences were concerned. Regarding article 12 and freedom to leave one's own country, he referred to the "boat people", who were continuing to leave Viet Nam for neighbouring countries such as Hong Kong, Korea and Japan, and asked what measures were being taken by the Vietnamese authorities at the national level to limit or to prevent that exodus. With regard to freedom of movement and residence (paras. 71 and 72), he would like more details on the limitations related "mainly to limited residence applied to convicted persons or persons considered as a peril to public order and security in relation to certain places of political, economic or security sensitivity" (para. 71), as well as on the re-education camps or establishments mentioned elsewhere in the report (para. 53).

16. With regard to article 14 of the Covenant, paragraph 80 of the report stated that the period allowed to accused persons for the preparation of their defence, which had originally been three days, had been extended to at least five days. Paragraph 81 stated that the accused or his counsel were entitled to request more time, which could be granted by the court. A period of five days seemed to him short, and he would like to have examples of cases in which further time had in fact been granted.

17. Concerning article 18 of the Covenant, paragraph 99 of the report indicated that there had been "a certain abuse of the right of religious freedom". He would like to have concrete examples of such abuse, and to know what steps had been taken to punish those responsible.

18. With regard to article 19 of the Covenant and freedom of expression, notably freedom of the press, paragraph 103 stated: "No censorship shall be applied before printing; only in the case of emergency and if it is necessary, the Council of State will decide to censor temporarily". Had censorship been applied in practice? Were foreign newspapers available in Viet Nam, and were the activities of foreign correspondents subject to restrictions? Was the press a State monopoly, or did independent publications exist?

19. On the subject of trade unions (art. 22 of the Covenant, paras. 112 to 118 of the report), he asked whether there were any other associations besides the Viet Nam Confederation of Trade Unions, what were the relations of that organization with the Communist Party or the Government, what were the requirements for membership of a trade union, and whether there was freedom to affiliate with a union.

20. On the subject of article 27 of the Covenant, concerning minorities, paragraph 140 gave statistics on the various ethnic minorities. He inquired whether teaching in the languages of such minorities was encouraged, notably in fields related to human rights, and what rights minorities enjoyed.

21. Lastly, he raised the question of the recent events in the countries of Eastern Europe, and wondered whether the profound changes which the socialist system was undergoing also affected Viet Nam.

22. Mr. MAVROMMATIS commended the process of renovation in which Viet Nam was now engaged. The Committee could not but be impressed by the country's long struggle in the past to achieve independence and unification. In that connection, he would have liked more information on the difficulties the country had encountered in achieving that independence and unification, as well as on any obstacles that had been met with in implementing the Covenant. At the beginning of the report (CCPR/C/26/Add.3, para. 21), the authorities in fact admitted that "many areas of citizens' rights" were "not yet fully institutionalized". No situation could be perfect, but what would most interest the Committee would be to know to what extent practice was in line with legislation. Defining rights in a constitution was one thing, but making the necessary provision for that constitution to be implemented was even more important. Through their questions, members of the Committee sought to gain a better understanding of the information given in the reports of States parties, and to supplement that information where necessary.

23. His first question concerned the first section of the report, and notably the status of the International Covenant on Civil and Political Rights in the legislative structure of Viet Nam: could the Covenant be invoked, and was it to be applied by the courts? Had the text of the Covenant been disseminated? Paragraph 12 of the report stated that Viet Nam's accession to the Covenant had not called for any basic changes or amendments in the country's Constitution, but that did not settle the question, and he would like to know whether ratification of the Covenant had led to changes in specific laws or customs.

24. With reference to the Vietnamese judicial system, and in particular to what was stated in paragraph 14 (d) of the report, he would like to have more details on the role of the Supreme and local People's Control Commissions. He was not very clear as to how such institutions could "ensure strict and unified implementation and application of law" by the courts, and wondered whether they constituted some kind of super-court, which was above the law and above the Supreme Court. He would appreciate clarification as to the usefulness of such an institution, which would appear to date from an earlier age, and be ripe for review. On the subject of the "leading role" played by the Communist Party of Viet Nam (para. 18), he wondered whether the existence of a party which carried greater weight than others and whose members had more privileges, was altogether in compliance with the provisions of the Covenant on non-discrimination, or with other provisions. Lastly, with reference to paragraph 20 of the report, concerning the various stages of the judicial system, he noted that the People's Control Commissions had the right to contest court decisions, and asked whether that right applied only to verdicts of guilty, or whether it extended to verdicts of not guilty.

25. Under the section headed "International instruments on human rights", paragraph 22 of the report stated: "Viet Nam expressed its reservation over the discriminatory nature of article 48, paragraph 1, whereby the Covenant does not allow all countries to become parties on the basis of equal sovereignty". He did not understand the grounds for that reservation, and pointed out that the previous day the Committee had considered the report of a small country, San Marino, which was not a Member of the United Nations; there had been no case of a country which had been refused the right to become a party to the Covenant.

26. Turning to part II of the report on implementation of commitments under the Covenant and referring to article 2, under which rights recognized in the Covenant were guaranteed without distinction as to political opinion, he noted that that ground for discrimination was not referred to anywhere in the report, nor was it found in the relevant article of the Vietnamese Constitution. However, assuming that in fact discrimination on grounds of political opinion could be invoked in Viet Nam, he would like to know what kind of redress could be claimed by someone who was the victim of such discrimination under that article.

27. Concerning article 3 of the Covenant, paragraph 37 of the report stated that in the case of divorce, "the mother has prior right to child guardianship". Was that provision in conformity with the principle of non-discrimination? In most countries, the interests of the child was the paramount consideration when awarding custody. It would appear that in that connection Viet Nam was discriminating in favour of women, and he would like to know why the law did not invoke the interests of the child.

28. The report was silent on article 4, and referred only once to states of emergency (para. 103). He would like to have more information on that point, since a country which had lived for so many years under a state of emergency was no doubt still suffering the consequences.

29. Concerning article 6 of the Covenant, paragraph 46 stated that application of the death penalty was restricted to extremely serious crimes: what were the crimes concerned? What was the meaning of the provision whereby "death sentence is deferred in case a convicted woman becomes pregnant after conviction"? Perhaps it was merely a matter of awkward drafting.

30. Regarding article 8, the reference to re-education camps prompted several questions: how had such camps operated, or how did they operate, if they still existed, and what was the justification for them? On what grounds were people sent to re-education camps? Could an order for detention in such a camp be contested, for instance by a plea of habeas corpus? Under the same article, paragraph 53 referred to "forced labour not prohibited by article 8 of the Covenant, and therefore not included among the human rights protected by the Covenant". The intent of the authors of the Covenant was clear: they did not approve of forced labour, and, as he saw it, the fact that forced labour was not prohibited under the Covenant did not justify re-education camps, at least in the form in which they reportedly existed in Viet Nam. It would appear from paragraph 54 of the report that Viet Nam did not recognize the right to conscientious objection, or to the performance of civilian service as an alternative to military service: was that interpretation correct?

31. In regard to article 9 of the Covenant, paragraph 63 of the report stated: "the system of bail is applied only to offenders who are foreigners". Was that not a case of reverse discrimination?

32. Where article 10 of the Covenant was concerned, he wondered whether there might have been a drafting error in paragraph 67 of the report, which stated, in the original English text, that the penitentiary system was planned to preserve, inter alia, "social security". In connection with the penitentiary régime, he wondered whether solitary confinement existed in Viet Nam, and if so in what cases it was applied, and whether prisons were inspected to ensure that the regulations governing the treatment of detainees were properly observed.

33. Regarding article 14 of the Covenant, paragraph 83 of the report stated that Vietnamese citizens of different minorities were entitled to use their own spoken languages and scripts before the courts: was that right also enjoyed by foreigners? Concerning article 16 of the Covenant, it was stated (para. 89) that all civil rights were protected by law if they were exercised in the interests of the people. That seemed a very vague criterion, and he would like to be given some examples: he would also like to know who decided whether a right was or was not exercised in the interests of the people, and how such a decision was taken.

34. Concerning article 22 of the Covenant, he referred to paragraph 112 of the report, which stated: "everyone has the right to freedom of association except those who have been deprived of citizens' rights or are being prosecuted before the courts". He asked what circumstance would warrant deprivation of citizens' rights. Was the presumption of innocence effectively applied in the case of persons being prosecuted before the courts?

35. Where article 23 of the Covenant was concerned, he would appreciate more details on the subject of forced marriage, which was said to be still in existence in rural areas (para. 121 of the report). In paragraph 122 it was stated that a husband was not allowed to obtain a divorce when his wife was pregnant or bringing up a child under the age of 12 months. What exactly were the reasons for that provision?

36. Mr. AGUILAR URBINA said that the right to live in peace was one of the most important of all human rights. There were two possible courses of action for States to follow in order to achieve, at the domestic level, a state of peace which would ensure respect for the dignity of the human person in all areas. The first, which was currently being followed in the Central American region, was to secure reconciliation between citizens by means of measures guaranteeing the full exercise of civil, political, economic, social and cultural rights. The second consisted in establishing a predetermined régime under which human rights were suspended until such time as reconciliation was achieved. It might well be that the latter objective could never be attained, since it was unrealistic to expect that the opposition could be completely silenced. It would be interesting to know which course of action Viet Nam had chosen to guarantee all the country's inhabitants the right to live in peace.

37. He did not fully understand the implications of the classification of fundamental rights into three groups, referred to in paragraph 11 of the report. He noted, first, that political, economic, cultural and social rights fell into the last of the three categories, and that civil rights were not even mentioned, which might suggest that civil rights were not considered as fundamental in Viet Nam. He had doubts as to the compatibility of a hierarchy of rights - the existence of which was implied by the three groups - with the spirit of the two International Covenants on Human Rights, according to which the various rights were indissociable, and the exercise of one right could in no case be considered subordinate to the exercise of others. The same comment came to mind on reading paragraph 14 (a) of the report, in which it was stated that the National Assembly decided on fundamental domestic and foreign policies "based on economic, cultural and development objectives". Did that mean that the exercise of fundamental rights was subordinated to those objectives?

38. Paragraph 10 of the report, which referred to participation by the population in the drafting of the Constitution, led him to wonder what procedure had actually been followed, and by what means such a seemingly overwhelming degree of popular participation had been ensured.

39. Viet Nam's ratification of so many international human rights instruments was to be welcomed, but he wondered what institutions existed to guarantee the Vietnamese the effective exercise of their rights under those instruments. If, as would appear to be the case, the Covenant was not directly applicable to Viet Nam, how could a Vietnamese citizen who considered himself to be the victim of a violation of one of the rights which were enshrined in the Covenant, but which had no equivalent in domestic law, ensure that the authorities concerned would take steps to restore his enjoyment of that right? That question was all the more pertinent in view of the statement in paragraph 21 of the report that there were many areas in which citizens' rights were not yet fully institutionalized or codified. The question also

arose, in view of the fact that the Penal Code punished "violations of the fundamental rights and freedoms of citizens" (para. 28 of the report), whether any case had occurred or might occur of an authority being accused of violating a right enshrined in the Covenant, even though that right had not been incorporated into domestic law. The report made no mention of any difficulties encountered in giving full effect to the provisions of the Covenant, but it occasionally hinted that matters were not as easy on that score as might be supposed from the absence of comment.

40. The fact that it had been found appropriate specifically to prohibit retaliation against persons lodging complaints or denunciations against State bodies or employees (para. 30 of the report) would seem to indicate that cases of retaliation had occurred, and he wondered what measures were taken to ensure that such cases did not recur, particularly in remote areas of the country; it would also be useful to know what penalties were imposed on State employees who were guilty of retaliation against a citizen who had lodged a complaint against him.

41. Concerning the status of women in Viet Nam, described in paragraphs 32 to 42 of the report, he would welcome further details, notably regarding the percentage of women in the National Assembly, the Council of State, the Council of Ministers, the Supreme People's Court and the Supreme People's Control Commission. It would also be interesting to learn what had been the main difficulties encountered in achieving equality between men and women, notably in view of some of the archaic, outdated concepts of the status of women that were referred to in the report.

42. The report was silent on article 4 of the Covenant, but in view of the statement in paragraph 21 that Viet Nam was "gradually lifting the undesired restrictions imposed in wartime" he wondered what rights had not been re-established and what rights had been suspended since the Covenant's entry into force. He would also like to know whether the Constitution made provision for a state of siege or other state of emergency, how such provisions were applied, what authority was competent to declare a state of emergency and what rights could be suspended in such circumstances. While it was understandable that Viet Nam might have had to restrict the exercise of certain rights during the war of decolonization, he wondered why it should still be "gradually lifting" those restrictions 15 years after the end of that war, and what practical steps were being taken to ensure that the exercise of all rights would be restored in the near future.

43. In respect of article 6 of the Covenant, he requested details of family planning policies, and would particularly like to know whether Viet Nam had set a compulsory limit on the number of births as some other countries had. He would also welcome information about the regulations governing abortion, particularly for married women.

44. The report stated that the death penalty was applied only for extremely serious crimes, although those crimes were not specified; it was important that the Committee should know what they were. In addition, the situation of people detained in re-education camps gave cause for concern, since informationn from certain sources indicated that conditions in the camps were so bad that 10 or even 15 per cent of detainees died. The Vietnamese delegation should indicate the measures taken to remedy that state of affairs.

45. Although Vietnamese law prohibited torture and other cruel and inhuman treatment, there had been reports of ill-treatment, in the recent past, particularly in respect of prisoners in re-education camps. Since such practices were sometimes due to the fact that law enforcement officials were unfamiliar with the rights of citizens in such a situation, he would like to know whether measures had been taken to provide members of the police or armed forces with training and information about the rights of the individual enshrined in national legislation and international instruments. He would also like to know whether there had been any investigations into the deaths and ill-treatment which had taken place and, if so, what the results had been.

46. The important role played by the People's Control Commissions was clearly shown in paragraphs 55 to 64 of the report, dealing with article 9 of the Covenant. Since it seemed that the Commissions had broader powers than the courts themselves, he would like to know who elected their members and under what procedure, and what conditions the members had to satisfy. In addition, what recourse was there for individuals who considered that the People's Control Commissions had treated them unfairly, and what authority supervised the operation of the Commissions in order to prevent abuses? The Committee would need further general details about the procedure and operation of the People's Control Commissions if it was to understand why they were necessary and why, in particular, cases arising from flagrante delicto emergency should be brought before the People's Control Commissions rather than the ordinary courts. Moreover, if the People's Control Commissions were also responsible for pre-trial investigations - as paragraph 61, taken together with paragraph 14, seemed to indicate - why was that the case? Were there independent courts for pre-trial investigation and, if so, how did their powers differ from those of the People's Control Commissions? What criteria governed the distribution of competence and responsibility between the two?

47. He also wondered why a special court - the Central Military Control Commission - was empowered to authorize the prolongation of temporary detention in certain cases (see para. 60 (d)).

48. He would like to receive a detailed explanation of paragraph 63 of the report, which dealt with the release of a prisoner on bail and temporary release "based on trust sponsorship". The provisions mentioned in that paragraph seemed to discriminate between Vietnamese citizens and foreigners. In respect of the right to redress, he would like to know what compensation was due to a victim of illegal detention or conviction, and what procedure must be followed to claim it.

49. In respect of article 10 of the Covenant, he wondered what the "socio-political education" of detainees meant in practice and, in particular, whether a convicted person could refuse to submit to such education on the grounds of his beliefs. Still on the subject of the penitentiary system, he wished to know whether there were any differences between penal establishments and re-education establishments, as paragraph 68 of the report seemed to imply when it stated that the People's Control Commissions monitored the observance of the law "by the penitentiary authorities or by officials in other re-education establishments". If there were differences between the two types of establishments, the Committee would need to know more about the reasons why a person should be sent to one rather than the other. Which authority took

the decision to send a convicted person to a re-education establishment? Paragraph 68 also referred to the other rights of which prisoners had not been deprived by law, which made him wonder about the rights which were suspended when a person was convicted or detained, particularly in view of the provisions of the Covenant which prohibited the suspension of certain specified rights.

50. Turning to article 12 of the Covenant, he asked in what case a person could be considered a peril to public order and security, which was one of the reasons for the restriction of freedom of movement and residence referred to in paragraph 71 of the report. In respect of the restrictions on the right to leave the country, referred to in paragraph 72, he asked for more detailed information about two of the reasons for withdrawing the right to leave: namely, cases where an individual had debts to the State or where travel abroad might endanger national interests.

51. Since it seemed that the responsibilities of the People's Control Commissions were largely judicial in character, he wished to ask, in view of the provisions of article 14 of the Covenant, about the qualities and competence required of the members of those Commissions. He also wondered about the independence of the judiciary: some details about the authority which appointed the members of the courts, the guarantees of independence and the measures designed to prevent interference by external agencies, such as the People's Control Commissions, in the work of the courts would serve to dispel all doubts. He would also like to know how cases of conflicting competence between a court and a People's Control Commission were resolved. Article 5 of the law on the organization of the People's Courts (quoted in para. 78 of the report), which stated that "during trial, judges and people's assessors are independent and subject only to the law", also gave him cause for concern, since he wondered what protection judges and assessors enjoyed when they were not engaged in a trial.

52. The question of the right to defence was dealt with in paragraphs 80 and 81 of the report. It was worrying that a prisoner might not be informed of the charge against him until five days before the trial, because such a short period left him hardly any time to prepare his defence; it was difficult to see why the prisoner was not informed of the charges immediately. It would be very useful to have more detailed information about the procedure and all the steps to be taken if the defendant or his counsel requested extra time because they felt that they did not have enough time to prepare the defence (see para. 81 of the report). It was difficult to reconcile the court's power to refuse to provide defendants with a full written charge in certain special cases with the judicial guarantees laid down in article 14 of the Covenant. Finally, the principle of the presumption of innocence did not seem to be entirely respected in Viet Nam.

53. With regard to article 15 of the Covenant, he asked for an assurance that the non-retroactivity of laws was always respected in Viet Nam, since he had heard of cases where laws passed after the acts for which charges were brought had been used against former South Vietnamese officials.

54. Although paragraph 103 of the report stated that "no censorship shall be applied before printing" of a newspaper or periodical, paragraph 105 indicated that newspapers and publishing houses must observe specified regulations and modalities, and he would like to know what they were. Some restrictions on the freedom of expression, such as those concerning propaganda for war and incitement to racial hatred, were provided for in the Covenant; however, the provision which made it illegal to "agitate against laws" (para. 105) called for further explanation.

55. In respect of article 22, he wondered whether there were any independent trade unions along with the Viet Nam Trade Union Confederation and, if so, whether they enjoyed the same rights as that Confederation.

56. The paragraphs dealing with article 23 of the Covenant made no mention of common law marriages and the rights of children born out of wedlock, particularly in respect of inheritance rights. More detailed information about the effects of marrying in a religious rather than a civil ceremony would also be useful.

57. He would welcome some details on the situation of minorities in Viet Nam, particularly since he had heard some allegations of discrimination against the Chinese minority.

58. Finally, since the writers of the report had laid stress on the consequences of the colonial policies of the past, he would like to know what difficulties Viet Nam had encountered in its implementation of the Covenant as a result of that colonial heritage.

59. Mr. FODOR said that, while Viet Nam's report provided a good basis for dialogue, he would have liked to see more detailed information about the actual situation in the country and its difficulties in implementing all the provisions of the Covenant.

60. Beginning with the Vietnamese Constitution, he listed several articles which were surely not consistent with the Covenant, such as article 2, which laid down that the Socialist Republic of Viet Nam was a State subject to the dictatorship of the proletariat, or article 4, under which the Communist Party formed the sole ruling force in State and society.

61. The situation in respect of the independence of the judiciary, which was one of the basic principles of article 14 of the Covenant, gave cause for concern, since the separation of powers did not seem to be very clear in Viet Nam. Moreover, he wondered whether people who did not embrace the ideology of those in power always received a fair trial. Under article 128 of the Constitution, popular organizations were set up at a local level to deal with minor offences and disputes; that was hardly consistent with the need to guarantee a fair trial, since specific legal knowledge was required in order to dispense justice.

62. He did not have a very clear idea of the exact status of the Covenant in Vietnamese internal law and, in particular, he would like to know which authority had ratified and promulgated the Covenant. He also had doubts about the hierarchy of sources of law in Viet Nam, and wondered whether those at the top really took precedence over those lower down, and whether the Covenant had been promulgated by means of a decree or a law.

63. He had been surprised to read in paragraph 16 of the report that "the State Council - the standing body of the National Assembly -" had the duty "to interpret the Constitution, laws and decrees", since the interpretation of the Constitution and the law was generally entrusted to the supreme judicial body or, at least, to a group of persons with a very high level of legal knowledge. Were the courts obliged to accept the interpretation of the State Council?

64. It was surprising to see that, 15 years after reunification, the Socialist Republic of Viet Nam still had no Civil Code or Code of Civil Procedure. He would like to know the reasons for that omission and whether, in practice, the lack of those Codes did not cause difficulties.

65. Like the other members of the Committee, he regretted that the report failed to comment on article 4 of the Covenant, particularly in view of the crucial importance of paragraph 2 of that article.

66. In respect of article 6 of the Covenant, he noted that the Vietnamese Penal Code listed an excessive number of offences which might incur the death penalty, some of which were political or economic in nature. Did the Vietnamese authorities propose to reduce the number of such offences?

67. Further information was needed about deprivation of citizenship, particularly the period during which it could be carried out and other rights which could be suspended at the same time.

68. Paragraph 53 of the report stated that forced labour could be imposed on those convicted of certain crimes and on habitual offenders, but also on persons whose anti-social behaviour posed a serious threat to the community; the imposition of forced labour on persons who had not been convicted, if that was what was meant, was incompatible with article 8 (3), of the Covenant.

69. Paragraph 60 of the report indicated that the length of temporary detention depended not on the complexity of the pre-trial investigations, but on the seriousness of the alleged offences. If that was the case, it would threaten the principle of the presumption of innocence, by making temporary detention equivalent to punishment before conviction. The maximum period for which temporary detention could be extended was not stated in the report.

70. The period of 30 days following the submission of the file on a particular case to the People's Control Commission for a decision on the measures to be taken against the defendant (see para. 61 of the report) seemed to him to be too long, and he would welcome further information on that point.

71. He wondered about the meaning of the sentence in paragraph 67 which referred to "re-educational treatment", and asked about the thinking underlying such treatment. It was possible to talk about educating prisoners, but to re-educate a person was to change his way of thinking and question the way he had been educated in the past. That was the problematic point, and it was difficult to see how such re-education methods could be consistent with the provisions of the Covenant, particularly those which guaranteed freedom of thought. As for freedom of movement, referred to in paragraph 72 of the

report, he would like to know how long the restrictions on travel abroad would apply to a Vietnamese citizen who had left public service. Was there generally a time-limit after which such restrictions would no longer apply?

72. In respect of article 13 of the Covenant, he considered that the restrictions listed in paragraph 73 of the report were too wide ranging; he wondered why, for instance, jobs such as bus-driving, printing and typing were on the list.

73. In respect of the independence of the judiciary, he would like to know how magistrates were appointed and the role of the Communist Party and social organizations in that process.

74. In respect of article 15 of the Covenant, paragraph 86 (b) of the report stated: "the heavier penalty is not applicable unless otherwise provided by the law". His interpretation of article 15 was slightly different, and excluded any possibility of imposing a more severe penalty. Finally, he would welcome an explanation of the temporary censorship referred to in paragraph 103 of the report, and particularly of what was understood by the phrase "only in the case of emergency and if it is necessary".

75. Mrs. HIGGINS welcomed the opportunity given to the Committee to begin a dialogue with the representatives of the Vietnamese Government; she was gratified at the clearness of that country's initial report (CCPR/C/26/Add.3), which took due account of the Committee's guidelines and, in particular, provided an article-by-article commentary on the implementation of the Covenant in Viet Nam. The report not only provided information on the framework of Viet Nam's national legislation, but it also gave a commendably frank account of certain problems experienced in implementing the Covenant and was, overall, one of the best reports to have come before the Committee.

76. Various measures had been taken to improve the human rights situation in Viet Nam including, in particular, wide-ranging penal reforms. However, the report, the Constitution, the various legal codes and the information provided by the Vietnamese delegation and other sources had left her with mixed feelings: she was struck both by the scale of Viet Nam's reconstruction programme and by the considerable difficulty of implementing the newly adopted provisions. Moreover, it was difficult to see how the various legal instruments fitted together, which instruments took precedence and whether the most advanced laws in human rights terms had priority over the others. Moreover, the transition to pluralism seemed to have slowed down recently.

77. Other members of the Committee had already commented on article 4 of the Vietnamese Constitution (dealing with the leading role of the Communist Party) and article 2 of the same instrument. The Committee did not seek to pass judgement on the institutions established by a country, but it did wish to make sure that the citizens of that country had the right to disapprove of them. She referred in particular to new regulations adopted in 1987 concerning the right of association of lawyers. They were designed to make sure that their association supported the socialist system and took as its aims the protection of the socialist legal system and the establishment of socialist democracy. Surely such provisions restricted the normal activities of a lawyer?

78. In the section on freedom of expression, she noted that, under article 67 of the Constitution, no one had the right to take advantage of democratic freedoms to work against the interests of the State. Could one conclude from that that a person's enjoyment of basic rights was dependent on his support of what was considered to be the interests of the State? In that connection, article 73 of the 1986 Penal Code listed a number of crimes against national security, which were considered extremely serious and might even incur the death penalty; among them were the dissemination of propaganda against the socialist régime, anti-socialist literature, etc. She would like to know why such activities should be considered offences and why they were not included under the right to freedom of expression.

79. Turning to the hierarchy of legal provisions, she noted that the Vietnamese press had stated that certain laws enabling suspects to be arrested and held without trial were still in force, in particular a 1976 decree issued by the provisional revolutionary government which had ruled the country before the creation of the present Vietnamese State. Other regulations had apparently been published recently as supplements to the Penal Code. Did those new provisions follow the spirit of the Code, or did they depart from it? She was particularly interested in the new provisional rules on pre-trial investigations, which allowed individuals to be detained without trial. She also wondered how compatible house arrest was with the provisions of the new Penal Code. She asked the representatives of Viet Nam to provide the Committee with a copy of the new law on administrative internment. Finally, was it the Penal Code that took precedence or the older laws, or even the various new laws and administrative regulations, which seemed to be rather different in spirit?

80. It seemed to her that the re-education camps amounted to a form of detention without trial. Such a measure was incompatible with the new Penal Code and, in any case, contrary to the provisions of the Covenant. Who were the people subjected to that kind of punishment? Was it true that they were mainly individuals connected with the former army or the former Government of South Viet Nam? Was it also true that the families of people detained in the camps were subjected to discrimination, particularly in education, which raised the question of violation of article 26 of the Covenant? Could the Vietnamese delegation confirm or refute the reports that individuals detained in re-education camps were subjected to continued surveillance even after their release?

81. The freedom of movement and the right to leave one's country were apparently subject to limitations incompatible with the provisions of article 12 of the Covenant, which was completely clear on that point. Moreover, she would like to know why so many members of religious minorities had been arrested, clearly for exercising their right to freedom of expression. It seemed that they had been punished for expressing their political beliefs.

82. Finally, she would be happy to hear the delegation's comments on recent statements to the Vietnamese press by senior Vietnamese officials, which seemed to imply that the peaceful transition to pluralism in Viet Nam was now being reconsidered.

83. Mr. MYULLERSON also praised the high quality of the report submitted by the Vietnamese delegation (CCPR/C/26/Add.3), which followed the Committee's guidelines and covered all the articles of the Covenant except article 4; unfortunately, however, the information given was mainly to do with legal standards, and the report gave no statistics or accounts of national practice.

84. There was no doubt that Viet Nam had made an effort to guarantee civil and political rights, particularly in recent years, and those efforts had borne fruit. However, because of the colonial war and foreign aggression which the country had suffered, the human rights situation was clearly far from ideal. In all countries which suffered such aggression, there were acute human rights problems, and the Committee was fully aware of those difficulties.

85. Turning to Viet Nam's report, he pointed out that in paragraph 14 it was stated that the legislative, executive and, in particular, judicial powers were exercised by the people's representative bodies. He deduced from that that there was no separation of powers. How could such a system guarantee respect for civil and political rights? A little later in the same paragraph, the report stated that the Supreme and local People's Control Commissions had very wide-ranging powers and monitored the courts compliance with the law. That situation contravened the principle of the independence of judges, particularly since the People's Control Commissions were also able to bring cases to court themselves. Article 136 of the Constitution, which stated that the local People's Courts were answerable to the People's Councils and were obliged to report to them, likewise led him to doubt the independence of the judiciary. He would like to know exactly how the local People's Courts were answerable to the People's Councils. What kind of reports did they have to give, and how often?

86. He asked which political parties were represented in the National Assembly. Now that the USSR had revoked article 6 of its Constitution, which had proclaimed the leading role of the Communist Party, what was Viet Nam's position on the dominant role of one of its parties? Did the Vietnamese authorities not consider that situation to be a violation of articles 25 and 26 of the Covenant?

87. Paragraph 53 of the report referred to convicted persons and those whose anti-social behaviour was seriously dangerous for the community. Was the forced labour imposed on such people in accordance with a sentence passed by a court under specific provisions of the Penal Code? Who decided that an individual's behaviour was anti-social and seriously dangerous for the community?

88. In respect of article 9 of the Covenant, paragraph 60 (d) of the report stated that a prolongation of the custody period could be authorized by the General Prosecutor or by the Central Military Control Commission. However, nothing was said about the length of such prolongation. He would welcome more information on the subject.

89. Turning to article 12 of the Covenant, he asked whether there were residence permits in Viet Nam. If so, what exactly were they? Surely such documents were a restriction on freedom of movement within the country? And what happened to someone who did not have such a permit? Could people be prosecuted for not possessing one?

90. With regard to court proceedings, paragraph 77 of the report stated that cases could be heard in camera in special circumstances, but that the final judgement must always be "made public". That seemed to contradict the spirit of article 14 of the Covenant, which was that any judgement in a criminal or civil case must be pronounced in open court.

91. In respect of article 18 of the Covenant, paragraph 99 of the report stated that, on occasion, "a certain abuse of the right of religious freedom" had taken place. In what circumstances did the Vietnamese authorities consider that abuses of the right of freedom of religion had occurred?

92. He had a further question about the so-called new economic zones. What exactly were they? Why had they been set up, where were they and who worked there? Finally, were people free to move to and work in these zones?

93. Article 67 of the Vietnamese Constitution stated that citizens enjoyed certain freedoms (freedom of expression, assembly, association and demonstration and freedom of the press) in accordance with the interests of socialism and the people. He was firmly convinced that such a provision was in fact detrimental to those rights; the Soviet Constitution contained a similar article, which was now strongly criticized by almost all legal experts. Such an article prevented those who did not see a future for their country in socialism from enjoying the rights referred to, and practice showed that constitutional provisions of that type could be converted into provisions in the Penal Code allowing such people to be prosecuted.

94. In respect of article 9 of the Covenant, he noted that articles 68 and 70 of the Vietnamese Code of Penal Procedure stated that custody warrants must be sent to the People's Control Commission for consideration within 24 hours, while article 9 (3) of the Covenant stated that anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power. He wondered whether those provisions of the Code of Penal Procedure were consistent with article 14 of the Covenant.

95. In his opinion, article 82 of the Penal Code was likely to lead to serious violations of the right to freedom of expression, since it stated, among other things, that individuals who wrote, harboured or disseminated anti-socialist works or cultural materials were liable to terms of imprisonment ranging from 3 to 12 years. In respect of the death penalty, article 27 of the Penal Code stated that it was not applicable to minors. What was the age of majority in Viet Nam? Was it 18, as laid down in the Covenant? Article 27 also stated that, in certain exceptional circumstances specifically laid down by the law, the death penalty could be carried out immediately after the sentence was passed. Did that mean that there was no possibility of an appeal or a request for clemency in such cases?

The meeting rose at 1.05 p.m.

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Thirty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 983rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 July 1990, at 3 p.m.

Chairman: Mr. DIMITRIJEVIC

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.983/Add.1.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Viet Nam (CCPR/C/26/Add.3) (continued)

1. Mr. EL-SHAFEI, welcomed the report of Viet Nam and the additional information provided in the introductory statement, particularly that concerning the new law on the press and the positive effect of renovation and economic reform on respect for human rights. He had been especially interested to hear that civil and political rights were evolving in Viet Nam rather than remaining stagnant. Since he himself came from a region where peace was threatened, he could appreciate that peace had an impact on human rights and their guarantees. He appealed to the Vietnamese Government to continue to adopt guarantees for civil, cultural and political rights, a responsibility in which all countries shared.

2. Noting that Viet Nam had adhered to the Covenant in 1982, and had proposed to submit its initial report in 1983, he nevertheless welcomed the submission of the initial report in 1990 as a sign that a dialoque had been established between Viet Nam and the Committee. The report was well written and followed the Committee's guidelines, although it referred more to the Constitution and legislation than to actual practice.

3. The question of respect for human rights in socialist countries posed a particular problem. Each country was free to choose the economic and social system that suited it, but there seemed to be a contradiction between commitment to the Covenant and the stress placed consistently in the report on the sovereign right of the State over the individual, who was required to be in the service of society. He wished to point out that as article 2 (2) of the Covenant stated, each State party undertook to take the necessary steps to give effect to the rights recognized in the Covenant. The Committee had received reports from other socialist countries also stating that the individual must be at the service of the State. Such an implicit contradiction with the Covenant must be avoided. He therefore asked for more information about the movement of renovation in Viet Nam and the hopes attached to it. Many of the difficulties faced by Viet Nam in applying articles of the Covenant were the result of war and the killing of so many Vietnamese citizens. Yet, the situation should not become a justification for non-respect of certain rights. He was sure that Viet Nam would try to avoid any limitation on the rights and freedoms recognized in the Covenant, in accordance with article 5 (1) of that instrument.

4. With regard to article 19 of the Covenant, he noted that articles 2, 3, 54 and 67 of the Vietnamese Constitution implied restrictions on the individual, and asked whether the individual lost his rights because of those restrictions. In the Penal Code and the law on the press, there were contradictions which seemed to take the situation back to 1957. He hoped that the movement of renovation would continue, that there would be reform of the penal situation and that the participation of the people of Viet Nam would be no less important in the movement of renovation than it had been in other fields.

5. Mr. POCAR expressed his sympathy for Viet Nam, a country whose people had suffered so much in its struggle for independence and unification. He had followed with great interest the Vietnamese Government's efforts to improve the human rights situation and appreciated the quality of its report, although as was usual with initial reports, it referred more to legislation than to practice. The introduction to the report had also been extremely useful.

6. Certain aspects of the report required clarification. The first concerned discrimination under article 26 of the Covenant. The Constitution of Viet Nam stated that all citizens were equal before the law. Was that also true regarding rights other than those dealt with in the Covenant, for example, social and economic rights? Were Communist Party members privileged, in fact if not in law, as far as the enjoyment of specific social and economic rights was concerned? Secondly, was the purpose of the identity cards delivered to citizens simply to provide them with a document to prove their identity or were there rights and privileges that were extended only to holders of those documents? He asked how and when the cards were issued, on what grounds they could be refused and how far such a refusal amounted to deprivation of civil rights.

7. Also with regard to discrimination, article 75 of the Vietnamese Constitution indicated that the State protected the legitimate rights and interests of Vietnamese living abroad. The conditions of Vietnamese citizens in some countries in Western and Eastern Europe were reported as being very bad, verging on forced labour. What was the Government of Viet Nam doing to improve the situation of large numbers of Vietnamese guest workers?

8. With regard to paragraph 46 of the report, he asked which crimes were sanctioned by the death penalty and requested statistics for the last five years on the number of persons sentenced to death, the number executed and the crimes involved. He also asked for clarification on re-education camps: to what extent they still existed, and whether people could be sent to them following an administrative and not a judicial decision, in other words, without a hearing and the right to defence.

9. With regard to freedom of movement mentioned in paragraph 72 of the report, he asked for further information on procedures for departure from and return to Viet Nam and whether, as recent reports had indicated, any discriminatory measures might be taken against people returning if they had left the country illegally.

10. Like his colleagues he had been struck by the statement in paragraph 99 of the report to the effect that a certain abuse of the right of religious freedom had occurred on the part of individuals who had undertaken activities aimed at disturbing national peace and unity. He had been particularly worried by a recent report concerning the arrest of a Catholic priest and by the explanation reportedly given by Radio Hanoi for the arrest, namely, that the priest had disturbed national peace by inciting Catholics to demand human and civil rights. He hoped that the explanation given was incomplete and that there had been some other justification for the arrest.

11. Paragraphs 113 and 114 dealt with the method of obtaining authorization to form associations. He asked whether, if the formal requirements set out in paragraph 113 were complied with, permission to form an association was always granted by the local administrative committees, or whether they had

discretionary power to consider the merits of the proposed activities of the association. Paragraph 125 referred to a 1979 decree on the protection, care and education of children in accordance with principles enunciated in article 3 of the text. That article did not refer to possible political discrimination. He asked whether in fact there was any discrimination between children on the basis of the political background of their parents. Finally, he noted that paragraph 140, referring to the cultural development of minorities, stated that "many of the backward customs have been abolished, while ethnic culture and valuable traditions are protected and nurtured". He asked what was understood by "backward customs", how the distinction was made between good and bad customs and how the latter had been abolished. He would like to have some examples of what had actually happened in order to ensure that the treatment of minorities had been consistent with the protection of minority rights stipulated in article 27 of the Covenant.

12. Mr. WENNERGREN said that the Vietnamese report could be described as a model initial report. He had been particularly struck by the information about the movement of renovation in the country which was evidently important in the context of human rights. The representative of Viet Nam had referred to the need for a dynamic rule of law and to the fact that from 1986 onwards, the authorities had sought to restore respect for the law as representing the will of the people. He would therefore like to compare the place given to the law in the Vietnamese Constitution with some of the provisions of the Covenant.

13. Article 67 of the Constitution referred to various freedoms, including that freedom of speech, being enjoyed by citizens "in accordance with the interests of socialism and of the people". That limited the definition of freedom of expression which appeared in article 19 of the Covenant and the scope was still further restricted by the third paragraph of article 67: "No one may misuse democratic freedom to violate the interests of the State and the people", which was vague compared with the limitations set out in article 19 (3) of the Covenant. According to article 100 of the Constitution, the Council of State had, inter alia, the power to "interpret the Constitution, laws and decrees". He was concerned from the legal point of view because the article implied that the Council of State was free to interpret legislation as it wished and that in effect there was no rule of law.

14. Article 69 of the Constitution stated that citizens might be arrested on the authority of a People's Court or on the decision of the People's Control Commission, whereas article 9 of the Covenant referred to "a judge or other officer authorized by law to exercise judicial power". He inquired what the nature of the People's Control Commission was and whether it had indeed been duly authorized to exercise judicial power. If the reference was to the Prosecutor and his staff, he wondered how that office could exercise judicial power. Furthermore, article 35 of the Penal Code stated that the People's Control Commissions were competent to commit an arrested person to a facility for compulsory medical treatment even before he had been tried. He asked whether the "facility" involved was a mental hospital and why what appeared to be an administrative body was authorized to take such decisions.

15. Sweden had always taken a considerable interest in events in Viet Nam but public opinion had been disturbed by reports of torture and ill-treatment in prisons and re-education camps. He asked whether commissions of inquiry investigated such reports and what happened to those guilty of abuse. Were they brought to trial and what part in the proceedings did the People's Control Commissions play?

16. Mr. PRADO VALLEJO said that Latin American countries viewed Viet Nam with sympathy as the victim of foreign intervention and an oppressive colonial régime. The Vietnamese report showed that considerable efforts were being made.

17. However, he had a number of supplementary questions. First, he wondered whether all the restrictions on human rights which had of necessity been in force during the period of foreign intervention had been completely lifted so that the authorities could say that the civil rights of citizens were currently fully guaranteed. The country's main problem had perhaps been reunification. He wondered whether contact had been fully restored between North and South and tension and recrimination had abated. In particular, did people in the South who had taken part in the armed struggle enjoy the same rights as those who had served in the armed forces of the North? The only way to ensure peaceful reunification was to guarantee similar rights to all citizens in all procedures affecting them.

18. Turning to the initial report (CCPR/C/26/Add.3) he observed that paragraph 53 referred to forced labour and asked in what such labour consisted and how it fitted in with the policy to rehabilitate those sentenced to prison. Paragraph 57 referred to the work of the People's Control Commissions. He asked how many such commissions were in existence, what powers they possessed and what their methods of operation had been in the recent past. Paragraph 60 of the report dealt with preventive detention. He noted that the period of custody authorized by the Vietnamese Code of Penal Procedure was lengthy and according to article 71 (d) might be prolonged even further, in which case it appeared that the accused person fell under the competence of the military court. He inquired whether he was right in thinking that the implication was that a civilian could be sentenced by a military court and asked for more information about the role of such courts. Paragraph 62 referred to the possibility that offenders might be temporarily released from preventive detention "if that does not endanger public order". He asked who decided whether public order would be jeopardized and whether, if the offender believed that he was being detained arbitrarily, he could appeal the ruling.

19. Paragraph 71 of the report stated that Vietnamese citizens were accorded the rights set forth in article 12 of the Covenant "except for certain limitations established by law for reasons of security and public order". He would appreciate more information as to the nature of those limitations. The paragraph also stated that restrictions on residence were imposed "in relation to certain places of political, economic or security sensitivity". He was not clear as to why certain localities should be placed out of bounds on economic grounds, and would be glad of an explanation from the Vietnamese delegation. Similarly, elucidation would be welcomed in regard to the restrictions on foreign travel placed on public employees, referred to in paragraph 72, as well as in regard to the restrictions on the rights of foreigners to own real estate and to exercise certain trades, notably printing and typing, mentioned in paragraph 73.

20. In particular, he would appreciate more information about cases of abuse of prisoners held in places of detention. Had such abuses been investigated, and if they had been proved, what measures had been taken to prevent them

recurring? Lastly, in relation to the right to freedom of religious belief, he would like to know whether that right extended to all creeds, or whether there were some that were subject to restrictions.

21. He expressed his thanks to the Vietnamese delegation, who had shown much patience and understanding despite the lengthy questions that had been put to them in connection with the report.

22. The CHAIRMAN said that the first part of the Committee's consideration of the initial report of Viet Nam was thus concluded. He invited the Vietnamese representatives to appear before the Committee on the morning of 12 July to answer the questions that had been put by members.

The public meeting rose at 4.35 p.m.